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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/826,371	04/04/2001	Jason P. McDevitt	KCX-250 (15306)	2875
22827	7590	12/16/2003	EXAMINER	
DORITY & MANNING, P.A. POST OFFICE BOX 1449 GREENVILLE, SC 29602-1449			HAMILTON, LALITA M	
			ART UNIT	PAPER NUMBER
			3624	

DATE MAILED: 12/16/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/826,371

Applicant(s)

MCDEVITT ET AL.

Examiner

Lalita M Hamilton

Art Unit

3764

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on RCE filed on November 24, 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-24,26-33 and 35-38 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-24,26-33 and 35-38 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 18.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Request for Continued Examination

On November 24, 2003, the Applicant filed a Request for Continued Examination (RCE). The RCE has been entered and an action follows below.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-6, 9, 24, 26-27, 32-33, and 35-36 are rejected under 35 U.S.C. 102(b) as being anticipated by Storandt (3,675,264).

Storandt discloses a tubular bandage comprising a base web having a nonelastic nonwoven web of fibrous material (fig.3: 12 and col.2, lines 30-40), the base web being laminated with an elastic layer (fig.3: 2 and 3 and col.2, lines 30-40), open distal and proximal ends being open and allowing for insertion of an appendage (fig.1), an elastic component providing form-fitting properties (col.2, lines 36-60), an elastic film (col.2, lines 1-8), the non-elastic, nonwoven web forming the interior surface of the sleeve (fig.1: 12), the sleeve being tapered for a better fit (fig.1 and 3 (seams) and col.2, lines 5-30), the ends being adapted to allow insertion of an appendage and the open distal end being adapted to receive an appendage inserted at the open proximal end such that the appendage can be inserted through the sleeve (fig.1 and col.2, lines 48-60), the nonwoven web being composed of one of spunbonded or meltblown fiber webs (col.2,

lines 34-35), the elastic component comprising an elastomeric material (col.2, lines 5-8 and 35-40 (flexibility of material may be interpreted as being elastomeric material)), the nonwoven web comprising a thermoplastic polymer (col.2, lines 33-35), the sleeve member being shaped to fit a finger (fig.1), a sleeve member comprising a first panel attached to a second panel with the panels forming seams that extend along the length of the sleeve (fig.3 and col.2, lines 1-20), the first panel comprising an elastic nonwoven material (fig.3 and col.2, lines 30-40), and the second panel comprising a nonwoven, non-elastic web (col.2, lines 30-35).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 7 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Storandt in view of Abuto (5,804,021).

Storandt discloses the invention substantially as claimed; however, Storandt does not disclose pulp fibers or fibrous. Abuto teaches a fibrous nonwoven laminate for use in bandages comprising pulp fibers (col.1, lines 20-27; col.2, lines 5-8; and col.6, line 40). It would have been obvious to one having ordinary skill in the art at the time the invention was made to substitute pulp fibers as taught by Abuto into the device disclosed by Storandt as an alternative choice of material for elastic component.

Claims 10-12, 28-29, and 37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Storandt.

Storandt discloses the invention substantially as claimed; however, Storandt does not disclose the elastic component comprising foam or the sleeve member comprising stretch- or neck-bonded laminates. It would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate an elastic component comprising foam and the sleeve member comprising stretch- or neck-bonded laminates, since it has been held to be within the general skill of a worker in the art to select known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

Claims 13-19 and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Storandt in view of Tassie (2,882,528).

Storandt discloses the invention substantially as claimed; however, Storandt does not disclose a moisture barrier on a portion of the base web that is substantially impermeable to liquids, vapor permeable moisture barrier, a plastic moisture barrier, a multilayered laminate, or a microporous plastic film. Tassie teaches a tubular finger bandage comprising a moisture barrier on a portion of the base web that is substantially impermeable to liquids (fig.1: 12 and col.2, lines 1-17) and plastic. Tassie discloses several types of moisture barriers, which the Examiner is interpreting as also including vapor permeable, microporous, and multilaminate films. It would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate a moisture barrier on a portion of the base web that is substantially impermeable to

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liquids, vapor permeable, plastic, a microporous, and a multilaminate as taught by Tassie into the device disclosed by Storandt to prevent liquids from contacting the area being treated.

Claims 20-21, 31, and 38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Storandt in view of Tanihara (5,77,229).

Storandt discloses the invention substantially as claimed; however, Storandt does not disclose additives or chitosan. Tanihara teaches a bandage comprising additives (col.10, lines 43-65) and chitosan (col.7, lines 20-22). It would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate additives and chitosan as taught by Tanihara into the bandage disclosed by Storandt to provide means of deterring infection in the area being treated.

Claims 22-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Storandt and Tanihara as applied claim 20 above, and in further in view of Satoh (5,120,758).

Storandt discloses and Tanihara teaches the invention substantially as claimed; however, neither reference discloses nor teaches a cyclooxygenase inhibitor. Satoh teaches a formulation for application to the skin comprising cyclooxygenase (col.13, lines 13-19). It would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate a cyclooxygenase inhibitor as taught by Satoh into the device disclosed by Storandt and taught by Tanihara to provide an alternative material for deterring infection.

Response to Arguments

Applicant's arguments with respect to claims 1-24, 26-33, and 35-38 in the RCE have been considered but are moot in view of the new ground(s) of rejection.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lalita M Hamilton whose telephone number is (703) 306-5715. The examiner can normally be reached on Tuesday-Thursday (8:30-4:30).

The fax phone number for the organization where this application or proceeding is assigned is (703) 746-6101.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-2272.


LMH



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